THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition No.14450 of 2007

% 11.09.2007

Between:

M/s S & S Associates,
rep. by its CEO,
Hyderabad, and others

…Petitioners

AND

Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Cooperative Department, Hyderabad, and others.

.....Respondents

! COUNSEL FOR Petitioners: Sri M. Narender Reddy

^ COUNSEL FOR RESPONDENTS: Sri A. Abhinand Kumar Shavali

S.C. for the 3rd respondent

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> Head Note:

? CITATIONS:

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JUDGMENT:

The petitioners, 6 in number, are partnership firms, represented by the same Chief Executive Officer, Sri Virendra Giri. The 3rd respondent is a Co-operative Urban Bank Limited, registered under the A.P. Cooperative Societies Act, 1964 (for short 'the Act'). The petitioners obtained individual loans from the 3rd respondent-Bank. As a security for repayment, title deeds, in respect of different items of immovable properties, were deposited with the

3rd respondent. Since repayment schedule was not adhered to, by the petitioners, the 3rd respondent initiated proceedings under Section 61 of the Act, by filing A.R.C.Nos.38460 of 2002 and batch. Recovery certificates were issued in favour of the 3rd respondent. Almost at the same point of time, the 3rd respondent-Bank was categorized by the Reserve Bank of India, as a weak institution.

It was placed under a rehabilitation scheme framed on 10-01-2002, and directions were issued under Section 35-A of the Banking Regulation Act, 1949, to be in force with effect from 25-02-2002.

Petitioners filed W.P.No.25149 of 2003 and batch, before this Court, assailing the recovery certificates. The writ petitions were dismissed through a common order dated 17-02-2004. Thereupon, the

petitioners filed Writ Appeal Nos.589 of 2004 and batch. When the writ appeals were pending, the request made by the petitioners for One Time Settlement (OTS), in accordance with the norms in vogue by that time, was considered, and the 3rd respondent conveyed its acceptance in principle, through letter dated
19-04-2004. In view of this development, the writ appeals were disposed of on 22-04-2004, observing that the sale of the mortgaged properties, in pursuance of the sale certificate, does not arise, in view of the settlement in progress.

Petitioners state that after the disposal of the writ appeals, the proposals for OTS, of the loans, due by the petitioners, were approved by the Board of Directors of the 3rd respondent-Bank,
as well as the Reserve Bank of India, and Memoranda of Understanding (MOUs) were entered into, in respect of individual petitioners, on 14th, 18th and 31st May, 2004. It is also stated that the entire amounts, as provided for under the respective MOUs, were paid. The petitioners complain that the 3rd respondent did not return the title deeds, even after the liquidation of the loan transactions.

Petitioners approached the Commissioner & Registrar of Cooperative Societies, the 2nd respondent, through various representations, in the months of May, June, and July, 2007 and the 2nd respondent, in turn, called for the remarks from the
3rd respondent. On a consideration of the same, he issued proceedings, dated 05-09-2005, observing that the petitioners discharged their liability, and the 3rd respondent is under obligation to return the documents. Even this was not complied with. Hence this writ petition.

The 3rd respondent filed two counter-affidavits, and one

additional counter-affidavit. The facts, pleaded by the petitioners as regards execution of MOUs and the payments made by them, are not disputed. It is, however, stated that the petitioners are still liable to pay substantial amounts, and unless the same is paid, the question of releasing the documents does not arise. Reference is made to certain credit limits, and it is stated that some errors have crept in, to the calculation of the said accounts.

Sri M. Narender Reddy, learned counsel for the petitioners, submits that the facility for OTS was extended to the petitioners, strictly in accordance with the guidelines issued by the Reserve Bank of India and the 2nd respondent, after obtaining the approval of the Board of Directors of the 3rd respondent. He submits that the 3rd respondent is resiling from its obligation, after receiving the agreed amounts.

The writ petition is contested by the 3rd respondent alone. Sri A. Abhinand Kumar Shavali, learned Standing Counsel for the 3rd respondent submits that the various payments made by the petitioners, after the dismissal of the writ petitions, and disposal of writ appeals; were adjusted towards the outstanding, and inasmuch as substantial amount is due from the petitioners, the title deeds were not returned. He contends that the writ petition is not maintainable, when disputed questions of fact exist.

The 3rd respondent sanctioned 6 items of loans, in favour of the respective petitioners, totalling to Rs.5,32,50,000/-, in the year 2001. It is a matter of record that default was committed by the petitioners. The 3rd respondent initiated proceedings under Section 61 of the Act, and obtained recovery certificates dated 30-04-2003, against the petitioners 2, 3 and 6; certificates dated 29-07-2003 against the petitioners 1 and 5, and the one, dated 20-06-2003, against the 4th

petitioner. All the certificates covered a sum of Rs.5,29,05,054.50/-. The writ petitions filed by the petitioners, against the recovery certificates, were dismissed and writ appeals were filed against the same.

Certain irregularities, as to the functioning of the 3rd respondent, were noticed, and that the Reserve Bank of India initiated various steps under the Banking Regulation Act. One of the schemes, evolved by the Reserve Bank of India, for improving the financial stability of the 3rd respondent; provided for certain incentives to the debtors of the latter to liquidate their liabilities. The salient features of the scheme are, that the simple interest be levied at 18% per annum from the date of disbursement till 02-03-2003, and the amounts paid up to that date, be deducted. The balance was to carry interest at 15% and was required to be cleared in 24 equal monthly installments. If the amounts stood liquidated on such calculations, the loanee was relieved of the obligation to pay any further amount. If any excess amount was paid, it was not to result in any payment, to be made by the 3rd respondent to the loanee.

It was in this context, that the petitioners moved a proposal for extension of the benefit under the OTS. On receiving the same, the Chairman of the 3rd respondent addressed a letter dated 19-04-2004, which reads as under:

> "We accept your proposal under option III payable in 24 instalments as per Circular No.28260/2000/UBV dated 23-03-2004. The method of payment arriving at crystallized account and payable amount as under. You are required to payment accordingly.
>
> **Calculations**:
>
> 1) To calculate 18% p.a. from the date of disbursement till 2.3.2003.
> 2) The highest balances for the month shall be taken for

calculations as simple interest (for that particular month).

3) Add principal plus simple interest minus all repayments, till date (2.3.2003), less share application money shall be crystallized amount as on 2.3.2003.

4) From 3.3.2003 till 19.4.2004 calculate 15% compounded on the above crystallized amount as on 2.3.2003. The balances so arrived as on 19.4.2004, is payable amount in 24 months equal instalments with 15% p.a. interest on diminishing balances."

Taking note of this development, a Division Bench of this Court disposed of the writ appeals. This was followed by approval of the proposal by the Board of Directors of the 3rd respondent, and Reserve Bank of India. Thereafter, MOUs were executed by the petitioners, on the one hand, and the 3rd respondent, on the other hand, stipulating the amount to be paid by each petitioner, and the method of payment thereof. The petitioners filed copies of the respective MOUs, which contained the schedule of payment. The averment of the petitioners, that they made payments in accordance with the schedule, is not denied.

When the 3rd respondent did not refund the title deeds, the petitioners approached the 2nd respondent. After calling for the remarks from the 3rd respondent, the 2nd respondent issued proceedings dated 05-09-2005. The content thereof is brief, and it is beneficial to extract the same. It reads as under:

1. "The Bank vide its three letters dt.19.4.2004 has stated that the proposal of OTS of parties is discussed and accepted by in the then Board meeting dt.15.4.2004 and requested the parties to make the payment accordingly. The parties were asked to visit the bank to sign the agreement formalities.

2. The bank vide letters dt.24.05.2004, 27.9.2005 and 03.06.2004 sent to the parties, the duly attested copy of MOUs and acknowledged the receipt of repayment of

post dated cheques given by the parties as stated in the MOUs.

3. The bank filed affidavit before the Hon'ble High Court indicating their agreement settlement with the parties and the Hon'ble Court endorsed the same in their order and observed that it is open to bank to proceed against the parties, if there is a breach of the settlements/agreements. If this is not implemented, it amounts to breach of the settlements/agreements by the bank but not the parties.
4. If the bank finds/feels that the MOUs and agreements reached by the bank and calculations arrived at in account statement prepared by the bank there is wrong, they should enquire and fix up responsibility on the officials concerned and necessary civil/criminal action is to be taken against them.
5. As the parties have repaid the entire loan by cheques as per crystallized account statement prepared and sent to parties by the bank and as per MOUs signed by the bank with parties, the settlements/agreements becomes final and the bank cannot go back and bound to return the documents.

The Managing Director, Charminar Cooperative Urban Bank Limited, Hyderabad is directed to implement the above orders immediately."

The 3rd respondent has not chosen, to either comply with this, or to challenge it, before any Court of law. Non-compliance persisted.

The main ground urged on behalf of the 3rd respondent is, that the payments made by the petitioners do not discharge the loan transactions in their entirety. A statement is furnished in the additional counter-affidavit, depicting as though, a substantial amount is still due from the petitioners. It is pointed out that no payments were made as regards four loan transactions. The fact remains that, till today, the 3rd respondent did not choose to address any proceedings, or issue any demand notice, in respect of any amount. It is relevant to mention that,

in every MOU, entered into between the petitioners and the respondents, a reference is made to the order passed in the writ appeals, and to the certification as to the correctness of the amounts mentioned therein. Across the Bar, learned counsel for the petitioners submits that in some of the loan transactions, it emerged that the amount remitted towards repayment exceeded the one, that became payable as the OTS. This is not either denied or explained away, by the 3rd respondent. An effort is also made by the 3rd respondent, to state that certain mistakes have crept in, to the calculations, as regards some transactions, and that the same were noticed during the course of audit. The allegation in this regards is vague, and is not supported by any record.

When the petitioners and the 3rd respondent have acted upon a scheme, evolved by the Reserve Bank of India, leading to the disposal of the writ appeals, and the execution of MOUs, it is not at all open to the 3rd respondent to resile from the same, after it received the payments, in accordance with the MOU. In none of the three counter-affidavits, filed by the 3rd respondent, it is alleged that the petitioners have either misrepresented, or committed any illegality in the process of entering into the MOUs. When an Apex Authority under the Act, the 2nd respondent, had verified the matter and recorded his findings, the 3rd respondent was under obligation to comply with the same. The conduct of the 3rd respondent in withholding the documents, even after receiving the payments made in accordance with the MOUs, entered into between itself and the petitioners, cannot be supported, either on facts, or in law. It is estopped from resiling from its commitment under the MOUs. Even if there existed any difference, as to calculation, it is deemed to have waived and acquiesced, in the light of the

crystallization of the rights of the parties under the MOUs; and on account of the change of their position, by the petitioners.

For the foregoing reasons, the writ petition is allowed, and the 3rd respondent is directed to return the title deeds, deposited by the petitioners, within a period of two weeks from today.

There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt. 11-09-2007.

Note:

1) L. R. copy to be marked.

2) c.c. in three days.

(B/O)
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